



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 2000

E. Lawrence Barcella, Esquire
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
Washington D.C. 20004

RE: MUR 4806
Hamilton Bank, N.A.
Eduardo A. Masferrer
Maria F. Diaz

Dear Mr. Barcella:

On January 13, 2000, the Federal Election Commission accepted the signed conciliation agreement and civil penalty that you submitted on behalf of your client, Hamilton Bank N.A., in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

E. Lawrence Barcella, Esq.
Page 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files.
If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tamara K. Kapper".

Tamara K. Kapper
Paralegal Specialist

Enclosure
Conciliation Agreement

2004-04-03 14:00:00

[illegible]

In the Matter of)
) MUR 4806
Hamilton Bank, N.A.)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Hamilton Bank, N.A., ("Respondent") violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Hamilton Bank, N.A. is a national bank within the meaning of 2 U.S.C. § 441b(a), and is headquartered in Miami, Florida.

2. Eduardo A. Masferrer is the Chairman of Hamilton Bank, N.A.

3. At all relevant times, Maria F. Diaz was the Senior Vice President, Finance at Hamilton Bank, N.A.

4. DNC Services Corporation/Democratic National Committee ("DNC") is a political committee within the meaning of 2 U.S.C. § 431(4)(A).

5. Pursuant to 2 U.S.C. § 441b(a), a national bank is prohibited from making any contribution or expenditure in connection with any election to any political office. Section 441b(a) also prohibits any officer or director of a national bank from consenting to any contribution or expenditure by the national bank.

6. Pursuant to 2 U.S.C. § 441b(a)(2), the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or anything of value.

7. A donation made to a national party committee for a building fund is not considered a contribution or an expenditure, if it is specifically designated to defray any cost incurred for the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for a Federal office. 11 C.F.R. § 100.7(b)(12) and 11 C.F.R. § 114.1(a)(2)(ix).

8. In the Spring of 1996, Mr. Masferrer had been contacted by Charles Dusseau, the former Secretary of Commerce of Florida, regarding the making of a contribution to the DNC.

9. By a follow-up letter dated April 1, 1996 addressed to Mr. Masferrer, Chairman, Hamilton Bank, N.A., Howard Glicker solicited a \$50,000 contribution to the DNC, which was the cost of an annual DNC Trustee membership. The solicitation letter was on DNC letterhead under Mr. Glicker's signature as Director, DNC Finance Board.

10. After receiving Mr. Glicker's April 1, 1996 letter, Mr. Masferrer instructed Ms. Diaz and Hamilton Bank N.A.'s Acting General Counsel to ascertain the legality of a contribution by a national bank to the DNC. The Acting General Counsel sought the advice of Hamilton Bank, N.A.'s outside counsel.

11. On April 18, 1996, Ms. Diaz initiated a Bank Purchase Requisition form that authorized a \$50,000 contribution, filling out only the information then available to her, thus designating the purpose as "Annual Trustee Membership." Both Ms. Diaz and Mr. Masferrer signed the requisition on that same date but Ms. Diaz instructed her staff to hold the check pending legal approval. Upon receiving the legal approval of the Acting General Counsel, the Board of Directors approved the contribution on April 23, 1996, and directed Ms. Diaz to issue the check to the DNC. Over the next few days Ms. Diaz and Mr. Dusseau communicated several times concerning the Bank's contribution to the DNC and she informed him that she would not instruct her staff to release a check until she received a formal legal opinion indicating that the contribution was permissible. Shortly thereafter, Mr. Dusseau arranged for the DNC's General Counsel, Joseph Sandler, to provide a legal opinion to the Bank.

12. On April 26, 1996, Hamilton Bank, N.A. received a letter dated April 24, 1996 from the DNC's General Counsel, Mr. Sandler, which advised that it is unlawful for a national bank to make a contribution or expenditure in connection with any election for political office, but that it was legal for the DNC to accept a donation to its Building Fund account from a national bank. The letter specifically advised that "[c]hecks to the Building Fund should be made payable to the 'DNC--Building Fund.'" Ms. Diaz forwarded that letter to the Bank's Accounts Payable Department.

13. On April 26, 1996, Hamilton Bank, N.A. sent the DNC a check for \$50,000 through the United States Postal Service and designated the contribution for an Annual Trustee Membership. The payee on the check was the DNC, not the DNC Building Fund. The Bank's Accounts Payable Department listed the payee as reflected on the April 18, 1996 Bank Purchase Requisition form rather than the payee listed in the April 24, 1996 Sandler letter.

14. On April 30, 1996, the DNC received the \$50,000 contribution from Hamilton Bank, N.A., and deposited it into a Non-Federal Corporate account, not its Building Fund account.

15. After the Office of the Comptroller of the Currency brought the contribution to the attention of Hamilton Bank, N.A., the Bank notified the DNC. On June 11, 1997, the DNC transferred \$50,000 from its Non-Federal Corporate Account to its Building Fund account. In a letter to the Bank dated June 16, 1997, Mr. Sandler stated that the contribution "should have been deposited in the DNC's Building Fund account. This was an error by the DNC staff who processed the contribution...."

V. Hamilton Bank, N.A. made a contribution totaling \$50,000 to a political committee in violation of 2 U.S.C. § 441b(a).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Five Thousand Five Hundred dollars (\$5,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY:

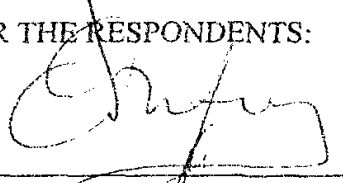

Lois G. Lerner
Associate General Counsel

Date

1/27/00

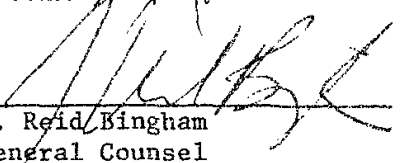
FOR THE RESPONDENTS:

HAMILTON BANK, N.A.


(Name) Eduardo A. Masferrer
(Position) Chairman

Date

11/29/99


J. Reid Bingham
General Counsel